justified in finding that in effecting the subsequent transfer into the name of the Respondent, the Appellant also at that time intended it to be for her benefit. There is no need for me to detail all this evidence or the evidence of the Appellant *per contra* as it was a question of fact for the learned trial Judge but even on the record itself and without having seen or heard the Appellant himself, it is abundantly clear that very little reliance could be placed on the Appellant's testimony in regard to this and his subsequent transactions with the land.

For the above reasons therefore, I am of the opinion that there was ample evidence to rebut the presumption of a resulting trust in favour of the Appellant and that such evidence established the proposition contained in paragraph (a) before set out and that therefore not only was the Respondent the legal and registered proprietor of the land but that she was also beneficially entitled to it as from the date she became such registered proprietor.

Having obtained the further Power of Attorney in May 1935, a year later, namely in May 1936, and under this power, the Appellant transfers the land into his own name, thereby dispossessing the Respondent of her property. This, the learned trial Judge found to be a fraudulent dispossession, and on the evidence before him, he was justified in coming to such conclusion.

The learned trial Judge also appears to have considered the position of the Respondent under paragraph (b) quoted above and found that the relationship of the parties raised a presumption that the transfer into the name of the Plaintiff (Respondent) was intended as a settlement.

I agree that this may be so but, strictly speaking, I consider this as evidence to support the rebuttal under paragraph (a) above.

In *Soar v. Foster,* 70 E.R. p.67 the Court refused to extend the principle existing in favour of a lawful wife or child to an unlawful wife although it has been extended in favour of a grandchild when the father was dead, and of an illegitimate child, on the whole the Courts appear to have been against extending the presumption of an advance or settlement.

The learned trial Judge, however, stated "but I do not think that so strict a rule which was laid down in 1858 would now be followed in England, and in any case I am satisfied that such a rule would be quite unsuitable to the Asiatic inhabitants of the F.M.S." While I am inclined to agree with the learned trial Judge in this remark, it was unnecessary to decide the point as to whether, out here it was desirable to extend the principle to a mistress, and I regard such remarks as *obiter dicta.* I refrain, therefore, from expressing a definite opinion on this second paragraph particularly as the Appellant already had a legal wife living in Ceylon.

For the reasons, however, that I have set out earlier and on the other ground, I am of the opinion that the appeal should be dismissed with costs.

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION]

MURRAY-AYNSLEY, J.

December 12, 1938.

GAN BENG - - - Appellant

v.

PUBLIC PROSECUTOR - - Respondent.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 93 of 1938]

(Tapah Criminal Case No. 835/38)

Penal Code (Cap. 45) s. 406—Breach of trust—meaning of "trust"—includes bailments.

The facts, as set out in the judgment, were as follows:—

The complainant lent the Appellant a bicycle, the latter promising to return it in two hours. Ten days later the complainant received a letter from the Appellant, and afterwards met the Appellant but the bicycle was never returned. Proceedings were taken and the bicycle was only produced by the Appellant when the present case came on for hearing before the Magistrate. It then had a new seat, rear mud-guard and fork. The defence at the Court below was that the Appellant did not misappropriate it.

Held, that the appellant was rightly convicted. **Ng Chye Giat v. Rex,** 7 M.L.J. 126 dissented from.

Hum Yam Teh for Appellant.

T. V. A. Brodie, Deputy Public Prosecutor, for Respondent.

Murray-Aynsley, J.—This is an appeal against conviction under Section 406 Penal Code for fraudulent breach of trust within the meaning of Section 405.

The facts are exceedingly simple.

[His Lordship here stated the facts as extracted, *supra*].

On the facts there was clearly not only ample but overwhelming evidence to support the finding of fact of the Magistrate, who convicted the Appellant. Counsel for the Appellant was content to attack this finding of fact but the Deputy Public Prosecutor with great propriety referred me to a case reported in 7 Malayan Law Journal p. 126 *Ng Chye Giat* v. *Rex,* in which the learned Judge, relying on a case reported in Gour held that the word "entrusted" is limited to trusts properly so called. The

actual words of Gour are "the word entrusted is used in its legal and not in its popular or figurative sense", so far quoting from an Indian case *Ghanasham Das,* 108 I. C. (S) the report of which is not available. Gour then adds in his own words "It means that it implies a creation of trust, actual or resultant, as is clear from the illustrations appended to this section".

Examinatioin of the illustrations reveals the fact that not a single one of them is a trust properly so called. By trust I mean that special form of obligation that could only be enforced in Courts of Equity. I think that in none of the illustrations would the injured party have been restricted to a Court of Equity in enforcing his demands. Two of the illustrations are ordinary common law bailments. I think on a proper interpretation of the section any bailment comes within its scope and the relation of bailor and bailee is one of common law, not of equity. The old writers were wont to define bailment as a trust or confidence. Even Hailsham Vol. I p. 724 gives a definition which uses the word "trust" but clearly not in its technical sense. In the case in the Malayan Law Journal the learned Judge went on to say.

> "In my opinion, a loan of jewellery to another does not create any legal trust under the meaning of section 405 of the Penal Code; even if (as alleged in the present case) a promise to return the same in a week's time was given.
>
> "In law the position of the parties is that of bailor and bailee. In the circumstances of this case, as told by the complainant, it was a gratuitous loan or 'commodatum'; that is a bailment where a chattel is lent by its owner to the bailee for the express purpose of conferring a benefit upon the latter, without any corresponding advantage to the owner.
>
> "How then, can it be suggested that any trust was created in favour of the complainant, or for her benefit? Clearly, if there were no trust actual or constructive, there can be no breach of trust, whatever other offence the appellant may have committed".

The present case is the same as the one reported except that it concerns the loss of a bicycle.

I have previously said that in my opinion the wording of the section is wide enough to include bailments and I see no reason to exclude that class which Lord Holt following the terminology of Roman Law called *commodatum.* It is true that the bailment is for the benefit of the bailee but the bailor retains many rights, indeed all rights except actual possession during the continuance of the bailment. I do not follow this decision and the appeal must be dismissed.

Appeal dismissed.

[On this point see also R. v. Lee Siong Kiat (1935) IV M.L.J. 53 per Terrell, J. at p. 56 R. v. Tan Ah Seng (1935) IV M.L.J. 273 and R. v. Salim (1938) VII M.L.J. 210.—Editor, M.L.J.]

[APPELLATE CIVIL JURISDICTION]

MURRAY-AYNSLEY, J.

May 22, 1939.

ESTATE & TRUST AGENCIES (1927) LTD.

vs.

COLLECTOR OF LAND REVENUE, SITIAWAN.

[PERAK CIVIL APPEAL No. 7 of 1939]

Land Code (Cap. 138), Ss. 10, 47—death of owner of land—legal personal representative, a foreign corporation—failure to comply with Part IX of Companies Enactment—transmission of interest.

A foreign corporation, having been constituted legal personal representative of a deceased person, sought to be registered as proprietor of the deceased's lands. Registration was refused on the ground that the company did not fulfil the conditions under the British and Foreign Companies Enactment or Part IX of the Companies Enactment.

Held, that as there was nothing to prevent the Company from being granted letters of administration, which had been done in this case, it was qualified to receive alienations of State land and also to receive transfers as representative where it would not be so qualified in its own right.

APPEAL from the decision of Collector of Land Revenue.

B. K. Das for the Petitioners, Estate & Trust Agencies (1927) Limited:—

Collector refused registration because Petitioners had not complied with Section 293 of the Companies Enactment (Cap. 58) and therefore did not come within the provisions of Section 10 (c) Land Code. He also relied on Section 47 Land Code.

Petitioners have not "a place of business" in Federated Malay States. Section 293 does not apply. As to place of business, see *Grant* v. *Anderson,* (1892) 1 Q.B. 108, *Lord Advocate* v. *Huron & Erie Loan and Savings Co.,* (1911) S. C. 612—A short note of this case appears in English and Empire Digest Volume 10 p. 1198 Footnote (m).

A foreign corporation, having its principal place of business outside Federated Malay States, can obtain here resealing of a foreign grant. *In Re McLaughlin,* (1922) P. 235.

Section 10 Land Code deals with alienation of State Land and not with land already alienated. Section 47 limits the right to sell, lease or charge—does not apply to transmission.

If deceased had applied for alienation of State Land but died before alienation petitioners could have received a grant from the State as representatives Section 10 (e) Land Code.

Lands vested in petitioners by virtue of Letters of Administration. Section 4 Probate and Administra-